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IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1422

RETIREMENT FUND TRUST OF THE PLUMBING, HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA,

Appellant,

vs.

EDITH J. JOHNS,

Respondent.

On Appeal From the Supreme Court of the State of California.

BRIEF IN OPPOSITION TO MOTION TO DISMISS.

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Appellant, pursuant to Rule 16(4) of the Rules of the Supreme Court of the United States, hereby opposes Appellee's Motion to Dismiss.

Statement of the Case.

The Court is respectfully referred to the STATEMENT OF THE CASE included in Appellant's brief on appeal from the Supreme Court of California.

ARGUMENT.

Appellee bases her motion to dismiss the appeal herein on the following two grounds: (1) that "the appeal does not present a substantial federal question"; and (2) that the judgment appealed from is founded on an adequate and independent state ground. Appellee's Brief at 3. As will be shown below, both of these allegations are totally without substance.

1. The Appeal Before This Court Does Present a Substantial Federal Question.

In support of her contention that a substantial federal question is lacking here, Appellee first argues that the Employee Retirement Income Security Act of 1974 (hereinafter "ERISA"), Pub. L. No. 93-406, 29 U.S.C. §1001, *et seq.*, does not preempt California community property law because "the federal law and the state law have as their objectives entirely different purposes". Appellee's Brief at 3. The state community property laws, she says, "*deals only* with the relationships between spouses and their interests in community property." Appellee's Brief at 3 (emphasis added). ERISA, on the other hand, she states

> "was enacted . . . to provide '. . . safeguards . . . with respect to the *establishment, operations,* and *administration* of private employee benefit plans,' and to establish '. . . minimum standards . . . assuring the equitable character of such plans and their financial soundness . . . [and to establish] standards of conduct, responsibility and obligations of fiduciaries.'" Appellee's Brief at 4.

Having so characterized the objectives of the two statutory schemes under consideration, she concludes:

> "It is clear that the intent of ERISA . . . does not conflict with the state scheme of *division* of community property . . . ."[1] Appellee's Brief at 5 (emphasis added).

This argument is clearly intended to mislead the Court regarding the subject of this appeal. Appellant has not, and does not now, contend that the mere "division" of marital assets, including retirement benefits such as those involved in the instant controversy, is precluded by ERISA. As Appellant pointed out in Section III of its brief on appeal, there are at least two alternative ways in which such a "division" could be accomplished without conflicting with the statutory scheme as set forth in ERISA.[2]

Appellant does take the position, however, that to the extent that California community property law authorizes a state court to *order* an ERISA regulated pension trust fund to make a direct distribution of benefits to the former spouse of a plan participant, it runs afoul of Section 514(a) of ERISA, 29 U.S.C. §1144(a), which expressly preempts all state laws which "relate to" employee benefit plans. Surely it

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[1]It is interesting to note that Appellee reached this conclusion after conceding that Section 514(a) of ERISA, 29 U.S.C. §1144(a), expressly preempts "'. . . all state laws in so far as they may now or hereafter relate to any employee benefit plan . . . .'" Appellee's Brief at 4.

[2]The first is for the trial court to retain jurisdiction and order the participant/spouse to pay the non-participant/spouse an appropriate portion of his benefits as he receives them. The second is for the trial court to make an award to the non-participant spouse, out of presently available community property, of an amount sufficient to compensate her for her interest in the participant/spouse's anticipated benefits.

must be conceded that such an *order* does not "deal only" with marital relationships and the interests of spouses in community property. It vitally affects the "'. . . *operations*, and *administration* of private employee benefit plans' ", the regulation of which, Appellee acknowledges, constituted a major purpose behind the enactment of ERISA. Appellee's Brief at 4.

Appellee's second argument in support of her contention that this appeal lacks a substantial federal question is that the ERISA Improvement Act of 1979, S.209, 96th Cong., 1st Sess. (1979), somehow evidences a Congressional intent "to eliminate even the appearance of preemption". Appellee's Brief at 5 n.1. It is respectfully submitted that this proposed legislation does nothing of the sort.

In the first place, an unpassed Senate bill cannot reasonably be cited as evidence of what Congress' intent was five years earlier when it enacted the existing statutory scheme upon which this appeal is based. Secondly, even if the bill could be so used, it would support the contrary proposition that Congress intended to preclude state courts from issuing orders, such as that in dispute here.

As Appellee noted, Section 155 of the bill provides, in pertinent part:

> "Section 514 of such Act is amended by—
>
> . . . .
>
> . . . .
>
> "(3) adding a new subsection (b)(6) to read as follows:
>
> "(6) Subsection (a) shall not apply respecting any judgment, decree, or order pursuant to a State domestic relations law (whether of the common law or community property type), if such judgment, decree or order is described in section 206(d)(3)."

The proposed Section 206(d)(3), which is contained in Section 128 of the bill, provides, in turn:

> "Section 206(d) of such Act is amended by adding at the end thereof the following new paragraph:
>
> "(3) Paragraph (1) shall not apply in the case of a judgment, decree or order (including an approval of a property settlement agreement), pursuant to a State domestic relations law (whether of the common law or community property type), which—
>
> "'(A) affects the marital property rights of any person in any benefit payable under a pension plan or the legal obligation of any person to provide child support or make alimony payments, and
>
> "'(B) *does not require* a pension plan *to alter* the effective *date, timing,* form, duration, *or amount of any benefit payments* under the plan *or to honor any election which is not provided for under the plan or which is made by a person other than a participant or beneficiary.*' " (Emphasis added).

The *order* involved in the instant case would not be one excluded from the application of Section 514 (a) of ERISA by Section 155 of the bill, because it fails to fulfill the requirements of the proposed Section 206(d)(3)(B). This is attributable to the fact

that it requires the Appellant "to alter" the timing, form and amount of benefit payments otherwise due Appellee's former spouse, and requires the Appellant to honor an election "not provided for under the plan . . . made by a person other than a participant or beneficiary." Insofar as the order is not one Congress would make exempt from Section 514(a), it must be concluded that Congress would intend that it, and like orders, be invalidated.

Neither of Appellee's arguments discussed above really support the proposition that a substantial federal question is lacking in this appeal. Rather, they go to the merits of the case-in-chief. As such, they should be given no weight at all on the issue of whether this appeal should be dismissed.

In its brief on appeal, Appellant pointed out that various conflicting decisions of lower federal and state courts have generated a great deal of uncertainty in regard to the preemptive effect of ERISA vis-à-vis California's community property laws. This uncertainty has, in turn, caused numerous employee benefit trust funds to incur high litigation costs in an attempt to protect the interests of their participants and to obtain some final resolution of the matter. These high litigation expenses promise to continue until such time as a definitive ruling is rendered by this Court. Appellant, therefore, respectfully requests the Court to reject the contention that this appeal lacks a substantial federal question.

2. The Judgment of the Court of Appeal of the State of California Does Not Rest on an Adequate and Independent State Ground.

The contention that the judgment of Court of Appeal of the State of California was based on an adequate and independent state ground (*i.e.*, California community property law) is indeed ingenious. If accepted, it would mean that this Court is without jurisdiction to review any state court decision rejecting a challenge to a state law on the ground that it is preempted by a federal statute. For the argument could always be made that the decision was based on the challenged state law.

An analysis of the rationale behind the adequate and independent state ground doctrine reveals that it is wholly inapplicable here. In the famous case of *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945), Justice Jackson stated:

> "This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. [Citations omitted] The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. *Our only power over state judgments is to correct them to the extent they incorrectly adjudge federal rights.*" (Emphasis added).

The parameters of this rationale are in need of exposition. If a state court ruled that an order or regulation is repugnant to both state and federal law, the Supreme

Court would be without jurisdiction to review the decision. For even if the Court disagreed with the state court interpretation of federal law, the decision could not be overturned, as the Supreme Court cannot reverse a state court interpretation of a state law (unless that law itself violates some federal statute or regulation). *See, e.g., Serrano v. Priest,* 5 Cal. 3d 584, 96 Cal. Rptr. 601, 487 P. 2d 1241 (1971). It stands to reason, however, that if a state court held an order or regulation *to be valid* under both state and federal law, the Supreme Court could review the decision. For if the order or regulation were found to violate federal law, the state court decision would have to be reversed regardless of the interpretation given the state law.

In holding the order of the trial court in the instant case to be valid under, and authorized by, California community property law, the court of appeal expressly held that ERISA "does not preempt California law as is applied here in matrimonial matters . . ." Appellant's Brief on Appeal, Appendix at 11-12. Appellee's contention that the judgment below was based on an adequate and independent state ground must, accordingly, be rejected, as a finding by this Court that ERISA does preempt California community property law, would require a reversal of the decision.

Conclusion.

Appellee has failed to substantiate the grounds upon which her motion to dismiss the appeal herein is based.

In support of her contention that the appeal lacks a substantial federal question, Appellee argues that the intent of ERISA "does not conflict with the state scheme of division of community property", and that the ERISA

Improvement Act of 1979 somehow substantiates this view. An examination of these arguments reveals, however, that Appellee's position herein is erroneous and misleading. More significantly, insofar as they go only to the merits of the controversy, they do nothing to advance the proposition that a substantial federal question is lacking.

Contrary to what Appellee might assert, the uncertainty created by conflicting lower court decisions makes it imperative for this Court to resolve the issue of the preemptive effect of ERISA in regard to California's community property laws.

Appellee's contention that this Court is without jurisdiction to consider this appeal because the judgment of the court of appeal for the State of California was based on an adequate and independent state ground is misplaced. The United States Supreme Court clearly has the authority to review a state court ruling that an order, such as the one involved here, does not violate a federal statute.

Appellant, therefore, respectfully requests the Court to deny Appellee's Motion to Dismiss, and to permit this appeal to be argued on its merits.

Dated: July 12, 1979.

Respectfully submitted,

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